

1                   REGULAR MEETING OF THE BOARD OF ZONING APPEALS

2                               City Council Chambers

3                                       300 Park Avenue

4                               Falls Church, Virginia   22046

5                                       January 14, 2016

6                                       7:30 p.m.

7  
8   1.   CALL TO ORDER

9  
10                   CHAIR WILLIAMSON:  I would like to call to order the  
11   January 14, 2016, meeting of the Board of Zoning Appeals.

12                   I'd like to ask for a roll call please.

13  
14   2.   ROLL CALL

15  
16                   RECORDING SECRETARY:  Mr. Williamson.

17                   CHAIR WILLIAMSON:  Here.

18                   RECORDING SECRETARY:  Mr. Krasner.

19                   MR. KRASNER:  Here.

20                   RECORDING SECRETARY:  Mr. Calabrese.

21                   (No response.)

22                   RECORDING SECRETARY:  Mr. Howell.

23                   MR. HOWELL:  Here.

24                   RECORDING SECRETARY: Mr. Jones.

25                   MR. JONES: Here.

26                   CHAIR WILLIAMSON: Thank you.

27

28    3.    PETITIONS

29

30                   CHAIR WILLIAMSON: Next item of Business is Petitions.

31                   Are there any Petitions here before us this evening?

32                   Seeing none, we'll move into New Business.

33

34    4.    NEW BUSINESS:

35                   a.   Election of officers

36

37                   CHAIR WILLIAMSON: The first order of New Business is

38    the election of officers. We have three positions to elect. We

39    have the chairman, the vice chairman, and the secretary. So I think

40    we'll go in that order as well.

41                   So if any of my Board members have a nomination for

42    the chair position.

43                   MR. KRASNER: I would move that we nominate Darcy

44    Williamson as our Chair, continue as Chairman for the year 2016.

45                   MR. HOWELL: I will second that.

46                   CHAIR WILLIAMSON: Is there any discussion among the

47 Board or shall we move to a vote?

48 (No response.)

49 CHAIR WILLIAMSON: And let the record show that Mr.  
50 Calabrese entered just a moment ago.

51 So I'd like to have a roll call vote on the nomination for  
52 Darcy Williamson as Chairman of the Board of Zoning Appeals.

53 RECORDING SECRETARY: Mr. Williamson.

54 CHAIR WILLIAMSON: Yes.

55 RECORDING SECRETARY: Mr. Krasner.

56 MR. KRASNER: Yes.

57 RECORDING SECRETARY: Mr. Calabrese.

58 MR. CALABRESE: Yes.

59 RECORDING SECRETARY: Mr. Howell.

60 MR. HOWELL: Yes.

61 RECORDING SECRETARY: Mr. Jones.

62 MR. JONES: Yes.

63 CHAIR WILLIAMSON: Okay. Thank you.

64 The next position is the Vice Chairman of the Board of  
65 Zoning Appeals and I'd like to open that up for any nominations.

66 And I would like to offer a nomination of Brent Krasner as  
67 Vice Chairman of the Board of Zoning Appeals.

68 MR. HOWELL: I'll second that.

69 CHAIR WILLIAMSON: Any discussion among the Board?

70 (No response.)

71 CHAIR WILLIAMSON: Roll call vote please.

72 RECORDING SECRETARY: Mr. Jones.

73 MR. JONES: Yes.

74 RECORDING SECRETARY: Mr. Howell.

75 MR. HOWELL: Yes.

76 RECORDING SECRETARY: Mr. Calabrese.

77 MR. CALABRESE: Yes.

78 RECORDING SECRETARY: Mr. Krasner.

79 MR. KRASNER: Yes.

80 RECORDING SECRETARY: Mr. Williamson.

81 CHAIR WILLIAMSON: Yes.

82

83 CHAIR WILLIAMSON: Okay. Thank you.

84 And the third position is the secretary of the Board of  
85 Zoning Appeals.

86 Does anyone have a nomination for that?

87 MR. HOWELL: I'd like to nominate Ms. Rouzi.

88 CHAIR WILLIAMSON: Okay. Is there a second?

89 MR. CALABRESE: Second it.

90 CHAIR WILLIAMSON: Okay. Is there any discussion among  
91 the Board?

92 MR. BOYLE: We have to require her to bring in pictures of

93 her new twins.

94 MS. ROUZI: I will do that.

95 CHAIR WILLIAMSON: Okay. Ms. Rouzi, please make it so.

96 As well as a roll call vote on that.

97 RECORDING SECRETARY: Mr. Williamson.

98 CHAIR WILLIAMSON: Yes.

99 RECORDING SECRETARY: Mr. Krasner.

100 MR. KRASNER: Yes.

101 RECORDING SECRETARY: Mr. Calabrese.

102 MR. CALABRESE: Yes.

103 RECORDING SECRETARY: Mr. Howell.

104 MR. HOWELL: Yes.

105 RECORDING SECRETARY: Mr. Jones.

106 MR. JONES: Yes.

107 CHAIR WILLIAMSON: Okay. That completes the election of

108 officers for 2016.

109

110 b. Review and adoption of Rules of Procedure

111

112 CHAIR WILLIAMSON: The next order of New Business is the

113 review and adoption of Rules and Procedures. We all are familiar

114 with these and have received them in advance and are in possession of

115 them.

116 Does anybody have any discussion or proposed amendments to  
117 the current Board of Zoning Appeals Rules of Procedure?

118 MR. KRASNER: I don't have any revisions to make tonight.  
119 I think by and large the Rules of Procedure are adequate.

120 Again, I would just put out there that given some of the  
121 changes to the State Code related to Variance law that came into  
122 effect July of last year, you know, there were certain rules related  
123 to ex parte communications and the amount of time applicants are  
124 allotted to present their case that it might be a smart idea to  
125 incorporate those into these Rules at some point.

126 I'm sure the City Attorney's aware of some of these changes  
127 and there are probably parts of City Code that need to be updated to  
128 reflect the new State Code. And whether it's going to be State Code  
129 or whether it's going to be in the City Code or in these Rules, it  
130 probably will be a good idea to memorialize those. I mean the State  
131 Code governs regardless whether we put it in or not. I think just to  
132 make sure everyone is on the same page it probably would be wise to  
133 do that.

134 It's not something that has to happen immediately but  
135 perhaps Ms. Rouzi in her spare time or Mr. Boyle could work with the  
136 City Attorney. I would be happy to do some drafts too but I think  
137 essentially lifting the State Code language and putting it into the  
138 Rules might suffice.

139 MR. BOYLE: So on ex parte communications.

140 MR. KRASNER: Ex parte communications, correct. There are  
141 Rules, we discussed this in the summer, and there are Rules about  
142 essentially limiting ex parte communications on Variance cases with  
143 City staff. So things like that. And there are Rules about making  
144 sure the applicant has the same amount of time to present their case  
145 as City staff.

146 Things like that, I think it might be a good idea to put  
147 them into the Rules so everyone is aware of them and informed when  
148 they come to make an application here.

149 CHAIR WILLIAMSON: I think it's a good idea.

150 Ms. Rouzi, could you make sure this is on our Agenda for  
151 next month, where you can provide an update on progress toward  
152 getting those consolidated and able for us to review them and  
153 incorporate them into the Rules of Procedure.

154 MS. ROUZI: Yes.

155 CHAIR WILLIAMSON: Okay. Any other discussion on the Rules  
156 of Procedure?

157 (No response.)

158 CHAIR WILLIAMSON: Would anyone like to make a motion to  
159 adopt these Rules of Procedure for 2016?

160 MR. KRASNER: Sure. I'll move that we adopt the Rules of  
161 Procedure as presented tonight for 2016.

162 CHAIR WILLIAMSON: Okay. Is there a second?

163 MR. HOWELL: I second.

164 CHAIR WILLIAMSON: Okay. Roll call vote.

165 RECORDING SECRETARY: Mr. Williamson.

166 CHAIR WILLIAMSON: Yes.

167 RECORDING SECRETARY: Mr. Krasner.

168 MR. KRASNER: Yes.

169 RECORDING SECRETARY: Mr. Calabrese.

170 MR. CALABRESE: Yes.

171 RECORDING SECRETARY: Mr. Howell.

172 MR. HOWELL: Yes.

173 RECORDING SECRETARY: Mr. Jones.

174 MR. JONES: Yes.

175 CHAIR WILLIAMSON: Okay. Thank you very much. They are  
176 approved.

177

178 C. Approval of 2016 meeting calendar

179

180 CHAIR WILLIAMSON: The third piece of New Business is the  
181 approval of the 2016 meeting calendar. We all have it in front of  
182 here. I'd just like to ask each of you to take a look at it and see  
183 if you have any questions or comments. Eleven meetings throughout  
184 the year, there's no scheduled August meeting at this time and just



185 follows the typical schedule that we've had for any number of years  
186 now.

187 MR. BOYLE: I'll say that from time to time we do conflict  
188 with some of the religious holidays. This year it did not seem to  
189 impact anything, so none of these dates fall out of the usual pattern  
190 of the second Thursday after the first Monday. Probably next year  
191 we'll have to adjust something but all of these were clear.

192 CHAIR WILLIAMSON: Okay. Thank you.

193 Is there a motion to approve these?

194 MR. HOWELL: I move that we approve the meeting dates for  
195 2016.

196 MR. KRASNER: Second.

197 CHAIR WILLIAMSON: Roll call vote.

198 RECORDING SECRETARY: Mr. Williamson.

199 CHAIR WILLIAMSON: Yes.

200 RECORDING SECRETARY: Mr. Krasner.

201 MR. KRASNER: Yes.

202 RECORDING SECRETARY: Mr. Calabrese.

203 MR. CALABRESE: Yes.

204 RECORDING SECRETARY: Mr. Howell.

205 MR. HOWELL: Yes.

206 RECORDING SECRETARY: Mr. Jones.

207 MR. JONES: Yes.

208 CHAIR WILLIAMSON: Thank you.

209 These will then be posted on the City's website?

210 MR. BOYLE: Yes.

211

212 d. Approval of the December 17, 2015, meeting minutes

213

214 CHAIR WILLIAMSON: The next order of business is the  
215 approval of the December 17, 2015, meeting.

216 MR. BOYLE: An individual known to staff neglected to send  
217 Ann the recording until late last week so when those are ready we  
218 will get them to the Board.

219 CHAIR WILLIAMSON: So we will have those on the meeting  
220 agenda for February 11th. We'll review those as part of that  
221 meeting.

222 MR. BOYLE: Yes.

223 CHAIR WILLIAMSON: Do we need to move to continue this  
224 Agenda item to next month?

225 MR. BOYLE: I don't think so. In fact, if the Board  
226 wishes, I'll send the electronic copies and they can be an Agenda  
227 item or you can discuss it, an ex parte communication. I don't think  
228 we need a motion.

229 CHAIR WILLIAMSON: Yes, let's just handle it next month. I  
230 think that's fine.

231 e. Discussion of policy for electronic, remote meeting  
232 participation for members of the BZA  
233

234 CHAIR WILLIAMSON: And then the next item of New Business,  
235 and for those in attendance, you can see it's a lot of administrative  
236 work this evening, we have before us a policy that was primarily from  
237 State Code and it's the approved altered version from the City  
238 Attorney, on the policy for electronic remote meeting participation  
239 for members of the Board of Zoning Appeals.

240 In the past you've had to be present for a meeting and this  
241 policy from State Code, again amended by the City Attorney for our  
242 use, is before us now.

243 So I'd like everybody to take a look at that and see if  
244 there's any discussion among the Board.

245 MR. KRASNER: I'm familiar with this provision from some  
246 other work I do professionally. It's a good policy in general. The  
247 key for folks to keep in mind is that it still requires a physical  
248 quorum to be assembled. And I work with some Boards and Commissions  
249 in my day job, there was an idea that perhaps the Board didn't have  
250 to have a quorum assembled, but no, you still need to physically have  
251 the quorum. It's to allow above and beyond that quorum, folks have  
252 a conflict or an issue, there's a way that they can participate  
253 through the telephone.

254           Nowadays, we can just go to technology. I don't know if  
255 we're so advanced, we can have them Skype in. So generally it does  
256 provide flexibility but State Code does require that the Board adopt,  
257 any Board that is going to utilize that provision, that they must  
258 adopt this policy to make it clear what the rules are for electronic  
259 participation.

260           So in general, first I think it's a good thing but it  
261 doesn't give us a free pass to all participate from the couch at  
262 home. Some of us still have to show up.

263           MR. CALABRESE: A question: It doesn't appear, I haven't  
264 read it in a while, to require that the remote participant have  
265 access to the meeting materials, does it? Verbal or oral  
266 participation without being able to access the materials that the  
267 plaintiff or petitioner would submit, might not render as accurate of  
268 a decision I would think.

269           MR. BOYLE: That's a good point. I don't think it does.  
270 The member who's attending remotely would have anything the Board  
271 received in advance of the meeting, but if the applicant were to  
272 arrive with additional information, we might as staff, we might in  
273 communicating with the applicant leading up to the meeting, make sure  
274 that they know that we need everything electronically and then we may  
275 be able to actually send it at the time of the meeting.

276           MR. CALABRESE: Yeah, and is there a requirement that the

277 -- I guess I'm reading this now, one of us simply state within 15  
278 minutes of the meeting or five minutes that we're not attending or  
279 does it require a notice of any period of time?

280 CHAIR WILLIAMSON: It simply says on or before the day of  
281 the meeting. Which, I think it actually points out that, if it's one  
282 of you, you would notify me, due to an emergency or specific matter  
283 and identify that with specificity. That can happen.

284 MR. KRASNER: I believe ultimately the Chair has some  
285 discretion on whether or not to allow it.

286 CHAIR WILLIAMSON: And the other thing I'll point out which  
287 I think it's worth all of us just keeping in mind is that no member  
288 can participate by electronic means more than two times in a calender  
289 year so it's not meant to be a substitute for a meeting.

290 MR. KRASNER: Right. I see it more as being an insurance  
291 policy on perhaps a day where we had something, someone had been  
292 looking to participate in and something comes up or a case where we  
293 were expecting a lot of discussion and the member wanted to  
294 participate. I don't think it's something that we'll use often but I  
295 don't see too much danger in having it as an option. In the event,  
296 probably the unusual event that it comes up.

297 MR. CALABRESE: Well, if we wished to place additional  
298 conditions, we could I suppose on this. This is being presented to  
299 us as a proposal, is that correct?

300 MR. BOYLE: Yes. It's an option available to the Board.

301 The Planning Commission was very interested in this. They had a  
302 situation where one of their very well-attended meetings where there  
303 was a lot of discussion back and forth and one of the members was  
304 unable to participate and it was raised either at the meeting or  
305 thereafter that there was this option.

306 So the City Attorney researched it, packaged the language  
307 for each Board to consider. It's not a requirement. It's an option  
308 for this Board to adopt. The text comes from the State, the format  
309 of what's in front of you was approved by the City Attorney and then  
310 that's followed up with the motion that the City Attorney prepared to  
311 make it part of your Rules or part of your Procedures anyway.

312 I'd suggest if you want to adopt this, just to give it a  
313 place to reside, to put it in the Rules of Procedure or reference it  
314 in the Rules of Procedure and take it from there.

315 I think historically the times we've had Board members not  
316 be able to attend, it's because something happened, a car problem, a  
317 family emergency just prior to a meeting. And in that case, they'll  
318 be handling whatever the family crisis is and not be able to attend  
319 electronically.

320 But it's an option for the Board in case you know you're  
321 going to be elsewhere, we'll have to develop some ways of making it  
322 as practical as possible. Mr. Calabrese pointed out, what if

323 additional materials arrive.

324               We'll have to discuss. Depending on the nature of the  
325 case, there's been language in the past about if there's contention  
326 between applicants, of the Board having the option not to accept  
327 materials if the other side hasn't received it. The Board probably  
328 has that option too, unless it's something that you think is going to  
329 be helpful.

330               In that case, staff will just be diligent in making sure we  
331 have electronic copies and we can probably send them to you live,  
332 right from the meeting then.

333               But in general, this is an option for the Board and I don't  
334 think we would have had too many opportunities to use this if it were  
335 in place in the past, but the Planning Commission at least is  
336 adopting it as part of theirs. I don't know if there's any other  
337 Boards or Commissions that are going to do it.

338               MR. KRASNER: Well, certainly I can see a benefit. If  
339 there's unusual circumstances, perhaps on a day where we have to have  
340 everyone present, where we had an even number and was concerned about  
341 it. I think the Planning Commission meeting you're referencing had a  
342 split vote and they were even three to three on a case and if they  
343 had their seventh member they would not have been deadlocked.

344               MR. CALABRESE: My only concern would be, as you mentioned  
345 the example, a car breaking down. So let's say they were on the road

346 and they may or may not have access to the papers. They certainly  
347 wouldn't have access to the materials presented at that moment and  
348 then maybe or maybe not the materials previously provided. So then  
349 we're asking them, yes, they would be present but I would think for  
350 the petitioner, they're not getting the full benefit of the Board  
351 member's attention, if they're not fully informed.

352 So that would be my only concern. You know, I think these  
353 Rules are fine. I think formally the Chair would want to just make  
354 sure that if they were to participate, they feel that they can,  
355 because they have the requisite knowledge or the materials.

356 MR. KRASNER: The only reason I see it happening is if  
357 somebody knows in advance they're going to be traveling on business,  
358 out of town, for folks that travel.

359 MR. CALABRESE: Yes, that would be helpful.

360 MR. BOYLE: Right, your flight's canceled.

361 MR. HOWELL: I just have a practical question. We have the  
362 technology presumably. Are we going to have a thing on the table for  
363 an audio presence for somebody's that's not here? It can be set up  
364 in the hour or two, it might be all we have in terms of notice.

365 MR. BOYLE: Yeah, the equipment I'm thinking of is not  
366 complicated to set up. So we could on short notice get it up and  
367 running.

368 One thing comes to mind. The applicants, when a member's



369 missing, the applicants have the option to continue. Perhaps we  
370 offer that to them and say we have a member willing to attend  
371 remotely and that member says they have none of the materials  
372 available but they're confident, kind of how you address it if you're  
373 going to recuse yourself. I'm going to identify the potential  
374 conflict but I'm able to perform the duties and take the vote. State  
375 that to the applicant that I'm in an airport, I do not have my  
376 materials but I'm familiar with the case, comfortable to proceed, and  
377 give them the option to go forward or not.

378 CHAIR WILLIAMSON: And the other item I see here is the  
379 Board of Zoning Appeals would vote to approve such participation.  
380 That's 1 B.

381 MR. CALABRESE: That's a good point.

382 CHAIR WILLIAMSON: So if we were looking at a voluminous  
383 stack of recently provided materials and someone did not have that,  
384 we could use our judgment to make the determination that it didn't  
385 fit; conversely we could use our judgment to determine that we would  
386 be able to proceed.

387 So I think that actually provides additional, I was going  
388 to say flexibility but it allows us to evaluate a particular  
389 situation.

390 MR. CALABRESE: Yes, I agree.

391 CHAIR WILLIAMSON: And I think having this as an option,

392 this is what it does. It presents it as an option, if we need it. I  
393 think we're all committed to be here in person. It's just an option  
394 that comes up.

395 MR. BOYLE: So essentially if something is received that  
396 you all felt was a significant change and the member that's missing  
397 would benefit by seeing it, then you could advise them this is  
398 something that I think is important that you have time to study.

399 MR. HOWELL: But the option would be available in that  
400 situation if we adopt it.

401 MR. BOYLE: Yeah.

402 CHAIR WILLIAMSON: Well, that was a good discussion. I  
403 know we have before us some language that could form the basis for a  
404 motion if we chose to move forward with this, I think we all received  
405 those in the records. So I'll just ask if anyone would like to make  
406 a motion on the policy for remote meeting participation.

407 MR. CALABRESE: I'll make a motion to approve the remote --  
408 the policy in participation of meetings through electronic means.

409 MR. HOWELL: I'll second.

410 MR. KRASNER: I'll propose a friendly amendment. I would  
411 just say, amend the motion to say that we are moving to amend this  
412 policy to our Rules of Procedure. And the best way to memorialize  
413 these is to have them either as an attachment or actually the  
414 document itself.

415 MR. BOYLE: If the Board agrees, staff can insert it as  
416 Roman Numeral 7 in the Rules of Procedure.

417 CHAIR WILLIAMSON: Yeah.

418 MR. BOYLE: And we'll bring that to the next meeting.

419

420 CHAIR WILLIAMSON: Mr. Calabrese, would you accept that?

421 MR. CALABRESE: Yes.

422 CHAIR WILLIAMSON: And the second?

423 MR. HOWELL: Yes.

424 CHAIR WILLIAMSON: Is there a roll call vote please.

425 RECORDING SECRETARY: Mr. Williamson.

426 CHAIR WILLIAMSON: Yes.

427 RECORDING SECRETARY: Mr. Krasner.

428 MR. KRASNER: Yes.

429 RECORDING SECRETARY: Mr. Calabrese.

430 MR. CALABRESE: Yes.

431 RECORDING SECRETARY: Mr. Howell.

432 MR. HOWELL: Yes.

433 RECORDING SECRETARY: Mr. Jones.

434 MR. JONES: Yes.

435 CHAIR WILLIAMSON: Okay. The motion carries.

436 That completes the items of New Business that we have.

437

438 6. OTHER BUSINESS:

439 CHAIR WILLIAMSON: Is there any Other Business?

440 MR. BOYLE: Maybe ask the Board to have our guests  
441 introduce themselves. I believe we have citizens interested in the  
442 alternate position for this Board. If they could rise.

443 CHAIR WILLIAMSON: This is the audience participation  
444 portion of the evening.

445 That's a wonderful idea. Who's here and who's interested  
446 in becoming an alternate?

447 MR. GATCH: My name is Thomas Gatch. I'm interested in  
448 becoming an alternate. I worked with legislative government affairs,  
449 with the Tennessee Society of Professional Engineers, obviously not  
450 Virginia. Interested in rules, policy, procedures, things like that  
451 so I thought this would be a good place to start out.

452 CHAIR WILLIAMSON: Wonderful. Nice to meet you.

453 MR. SPROUSE: Patrick Sprouse. I've been in real estate  
454 development and real estate corporation for a number of years. Went  
455 down to Texas for a few years, moved back to Falls Church two years  
456 ago. So it's nice to be home and just find hopefully some ways to  
457 participate in the local community.

458 CHAIR WILLIAMSON: Wonderful. Welcome back.

459 Any other alternates?

460 MR. THEOLOGIS: Theodore Theologis. I've been an owner in

461 the City for about ten years, although most of it I've been an  
462 absentee owner, the landlord. I'm an attorney and a real estate  
463 broker but I moved back to the City and was interested in  
464 participating.

465 CHAIR WILLIAMSON: Well, that's great.

466 Okay. Well, thanks for attending tonight. You'll have  
467 either Mr. Krasner or myself will probably have a chance to meet all  
468 of you a little more. I look forward to that, to have one other  
469 member of the Board to move the process forward. That's very good.

470 Like I said, we usually have actual matters before us  
471 beyond administrative activities.

472 Any Other Business?

473 (No response.)

474

475 7. OLD BUSINESS

476

477 CHAIR WILLIAMSON: Okay. Any Old Business? I don't think  
478 so.

479 (No response.)

480 8. ADJOURNMENT

481

482 CHAIR WILLIAMSON: Is there a motion to adjourn?

483 MR. KRASNER: So moved.

484 CHAIR WILLIAMSON: Is there a second?

485 MR. CALABRESE: Second.

486 CHAIR WILLIAMSON: Roll call vote.

487 RECORDING SECRETARY: Mr. Williamson.

488 CHAIR WILLIAMSON: Yes.

489 RECORDING SECRETARY: Mr. Krasner.

490 MR. KRASNER: Yes.

491 RECORDING SECRETARY: Mr. Calabrese.

492 MR. CALABRESE: Yes.

493 RECORDING SECRETARY: Mr. Howell.

494 MR. HOWELL: Yes.

495 RECORDING SECRETARY: Mr. Jones.

496 MR. JONES: Yes.

497 CHAIR WILLIAMSON: We are adjourned. Have a good evening,

498 everybody.